

AGENDA ITEM

TO: Tim Vandall, City Administrator
FROM: Anthony J. Zell, Jr., Wastewater Utility Director 
DATE: May 10, 2024
SUBJECT: Engineering Services Contract – Ida/Gamble Street Sewer Relocation (City Project 2024-02)

Staff briefed the city council on this project during the April work session. This project will reroute sewers from the 43-year-old 21" interceptor to the new 36" interceptor that was installed as part of the 7 Mile Creek Action Plan. This rerouting is necessary to maintain the proper velocity in the sewer system since only 65 homes and 3 duplexes flow into the large line. This lack of flow contributed to the sewer overflow in the summer of 2023, and has necessitated routine cleaning/debris removal on 90-day intervals, at a cost of \$4,000 per occurrence.

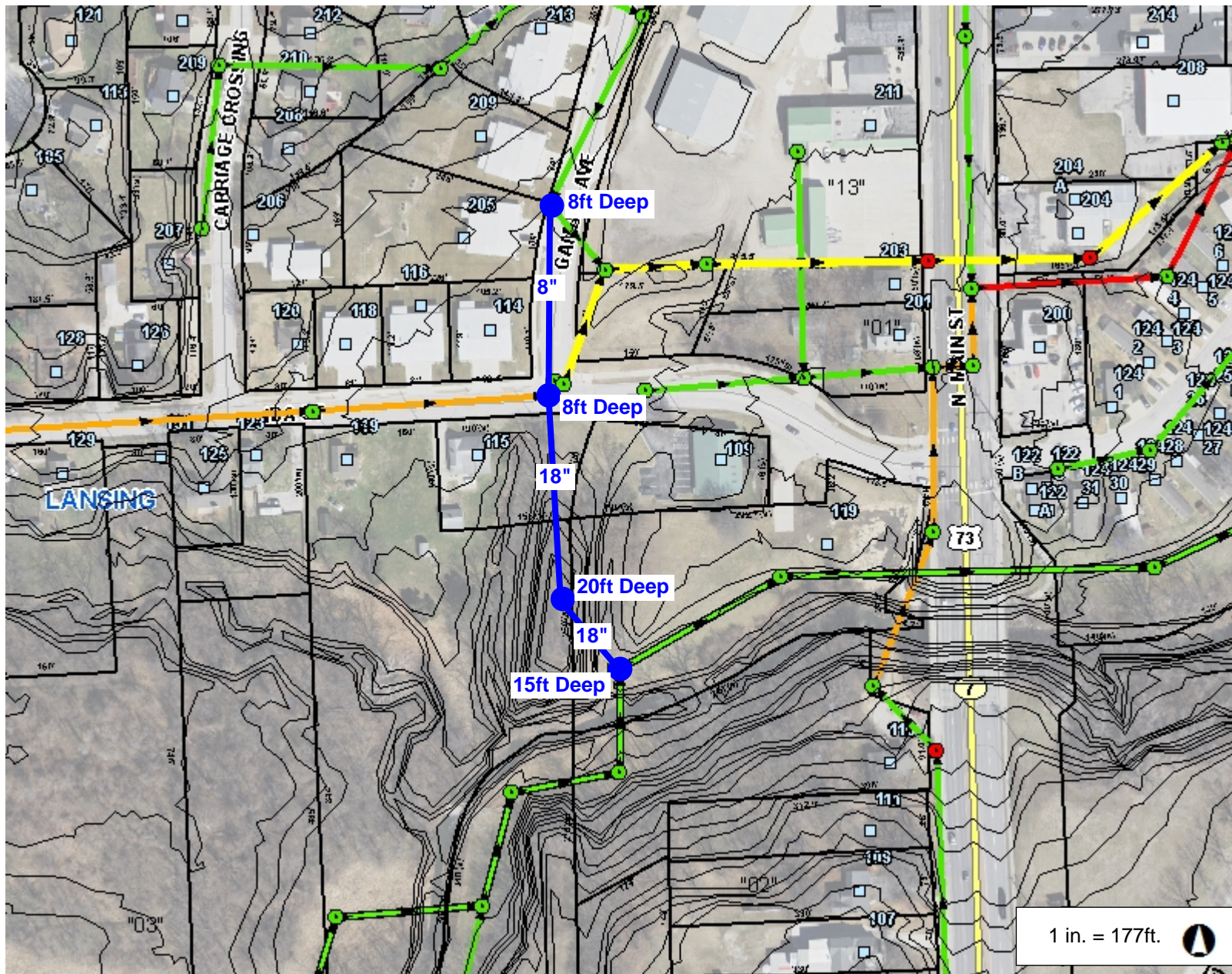
Staff have met with and negotiated a scope and fee for the design of this project and anticipates it will be bid in conjunction with the Town Centre project (scheduled for September 2024). A copy of the scope documents is included with the agenda packet.

Policy Consideration: The City's purchasing policy Section 4.4.1 allows the City Administrator to waive the selection process for consulting engineers who have worked on projects of similar nature within the previous 18 months.

Financial Consideration: Funds are available in the 2024 base budget, line account for engineering services, 50-050-41120.

Recommended Action: A motion to approve the scope and fee from GBA for design services of City Project 2024-02, in the amount of \$91,265.00 (base fee of \$86,919.00 plus a contingency of 5%).

Lansing, KS



Legend

- Two Ft Contour
- Manhole
 - NotVerified
 - Verified
 - Verified/Buried
- Gravity Main by Size
 - <all other values>
 - 6"
 - 8"
 - 10"
 - 12"
 - 15"
 - 18"
 - 21"
 - 24"
 - 36"
 - 54"
- Major Road
 - <all other values>
 - 70
- Road
 - <all other values>
 - PRIVATE
- + Railroad
- Address Point
- Parcel

1 in. = 177ft.



354.8 0 177.38 354.8 Feet

This Cadastral Map is for informational purposes only. It does not purport to represent a property boundary survey of the parcels shown and shall not be used for conveyances or the establishment of property boundaries.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

CITY OF LANSING, KANSAS

AND

GEORGE BUTLER ASSOCIATES, INC.

ARTICLES OF AGREEMENT

This AGREEMENT made as of ___ day of _____ 2024 between the City of Lansing, Kansas, (hereinafter called the "CITY") and George Butler Associates, Inc., (hereinafter called the "ENGINEER").

WITNESSETH:

WHEREAS, the CITY is in need of professional assistance for Engineering Design Services for Ida Street Sewer Improvements; and

WHEREAS, the CITY is authorized and empowered to contract with the ENGINEER to provide professional services as hereinafter described; and

WHEREAS, the ENGINEER, a Kansas Corporation with offices at 9801 Renner Boulevard, Lenexa, Kansas, is registered in accordance with the laws of the State of Kansas and is qualified to provide the professional services desired by the CITY; and

NOW THEREFORE, the CITY and the ENGINEER, in consideration of the promises and covenants made herein, the parties agree as follows:

IT IS AGREED THAT:

SECTION I - PROJECT

The CITY has selected and hereby employs the ENGINEER to perform Engineering Design Services for Ida Street Sewer Extension, hereinafter referred to as the Project.

SECTION II - SCOPE OF SERVICES

A. BASIC SERVICES

Upon execution of this Agreement by the CITY, the ENGINEER shall provide the following professional services listed in Attachment A - Scope of Services.

B. ADDITIONAL SERVICES

The following additional services shall be furnished by the ENGINEER upon receipt of a

Supplemental Agreement from the CITY:

1. Services resulting from significant changes in the general scope of the Project or its design including but not limited to changes in size, complexity, CITY'S schedule, or character of construction; and revising studies, reports, design documents, or contract documents previously approved by CITY, including preparation of change orders during the construction phase of the Project.
2. Time spent in preparing for and attending public hearings at the request of CITY.
3. Services after completion of the construction phase such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in the Project; or observation of the Project after the end of the contractor's maintenance or guarantee period.
4. Preparing to serve or serving as a Consultant or Witness for CITY in any litigation or other legal or administrative proceeding involving the Project.
5. Those services not normally provided by the ENGINEER, but essential to the successful completion of the Project, will be subcontracted by the ENGINEER to sub-consultants who will be selected by the ENGINEER. Services to be provided by sub-consultants will include survey and easement preparation, soils and materials testing required for the preparation of any design reports, for construction period testing, and other services not included in Section II.A, Basic Services which are considered essential to the successful completion of the project by both the CITY and the ENGINEER.

SECTION III - RESPONSIBILITIES OF CITY

The CITY shall provide information and assistance as follows:

A. CITY REPRESENTATIVE

The CITY shall designate a representative authorized to act on the CITY'S behalf with respect to the Project. The CITY or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the ENGINEER in order to avoid delay in the orderly and sequential progress of the ENGINEER'S services. The ENGINEER shall interpret all requests for Additional Services by the CITY'S representative to have the full approval of the governing body of the CITY.

B. AUTHORIZATION

1. The CITY shall furnish approval, consents, and letters of authority as may be necessary for performing the services required under this Agreement in a timely manner.
2. Furnish to the ENGINEER a certified copy of the legislation, ordinance or resolution authorizing signing of this Agreement.

C. INFORMATION

The CITY shall provide to the ENGINEER:

1. All available reports, plans, specifications, background information, and other data pertinent to the services required under this Agreement; all of which ENGINEER may rely upon on the accuracy and completeness of the information so furnished in performing services hereunder.
2. All requirements for the Project, including project objectives and constraints, capacity and performance requirements, and budgetary limitations.
3. A list, including names, addresses, and phone numbers (if available), of all affected property owners along the project corridor.
4. The ENGINEER shall be entitled to rely on the accuracy and completeness of the information so furnished.

D. ACCESS TO SITE

The CITY shall arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required by ENGINEER to perform services covered by this Agreement.

E. LEGAL DESCRIPTIONS

The CITY shall be responsible for obtaining all necessary easements and right-of-way for proposed improvements. If required in Section II Scope of Services ENGINEER will provide property legal description and exhibit. CITY shall provide the easement form.

F. CITY KNOWLEDGE OR CIRCUMSTANCES

1. The CITY shall give prompt written notice to the ENGINEER whenever the CITY observes or otherwise becomes aware of any fault or defect in the project or nonconformance with the Contract Documents.
2. The CITY shall give prompt written notice to ENGINEER whenever CITY observes or otherwise becomes aware of any development that affects the scope of timing of ENGINEER services.
3. The ENGINEER shall not be responsible for delays in the Project, or in the services hereunder, when delays are caused by the CITY, its agents, employees or contractors, or other causes beyond the reasonable control of ENGINEER.

G. MISCELLANEOUS

1. The CITY shall obtain advice of an attorney, insurance counselor and other consultants as CITY deems appropriate for examination and rendering of decisions pertaining to documents presented by the ENGINEER within a

reasonable time so as not to delay the services of the ENGINEER.

2. If requested by the ENGINEER, the CITY shall furnish evidence that financial arrangements have been made to fulfill the CITY'S obligations under this Agreement.
3. The CITY shall provide and pay for the cost of any mutually agreed upon subconsultants, testing, or laboratory services identified in the Scope of Services, Section II.
4. The CITY shall obtain bids or proposals from Contractor(s).
5. The CITY shall pay for all filing fees, application fees and permits from all governmental authorities having jurisdiction over the Project, and from others as may be necessary for completion of the Project.
6. The ENGINEER shall have no obligation to CITY to execute any agreement or document subsequent to the signing of this agreement, (whether lender consent, certification or otherwise), which in the sole judgment of the ENGINEER may increase risk, modify its obligation under this agreement, require performance by the ENGINEER to any person or entity not a party to this agreement or adversely affect the availability or costs of its professional or general liability insurance.

SECTION IV - COMPENSATION

A. COMPENSATION

The CITY shall compensate the ENGINEER for services rendered and expenses incurred as described in this Agreement a maximum of \$86,919.00. The maximum compensation shall not be exceeded without further authorization by Supplemental Agreement as approved by the CITY.

Compensation to the ENGINEER by the CITY shall be based on actual hours worked plus direct expenses in accordance with the Standard Hourly Chargeout Rates schedule as shown in Attachment B.

It is hereby agreed that said Attachment B is subject to adjustment on July 1st of each year by the ENGINEER to reflect increase in salaries and overhead costs.

B. BASIS OF PAYMENT

Payments to the ENGINEER shall be made monthly upon receipt of an invoice to be submitted to the CITY). Invoices shall be accompanied by an appropriate breakdown consistent with Paragraph A - Compensation. The CITY shall make payment to the ENGINEER within 30 days following the date of each invoice.

C. ADDITIONAL SERVICES

Additional Services rendered shall be provided as stipulated in the Supplemental Agreement for such additional services.

SECTION V - TERMINATION

- A. The CITY may terminate this Agreement at any time with or without cause upon giving the ENGINEER 14 calendar days prior written notice. The ENGINEER may terminate this Agreement upon giving the CITY 14 calendar days prior written notice for any of the following reasons:
1. Breach by the CITY of any material term of this Agreement, including, but not limited to, payment terms.
 2. Transfer of ownership of the Project by the CITY to any other persons or entities not a party to this Agreement without the prior written agreement of the ENGINEER.
 3. Material changes in the conditions under which this Agreement was entered into, coupled with the failure of the parties hereto to reach accord on the fees and charges for any Additional Services required because of such changes.
- B. The CITY shall within 30 calendar days of termination pay the ENGINEER for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this Agreement.
- C. The CITY shall reimburse the ENGINEER for all expenses reasonably incurred by the ENGINEER in connection with termination of this Agreement, including but not limited to demobilization, reassignment of personnel, and space and equipment costs.

SECTION VI – TIME OF SERVICE

- A. This agreement shall remain in effect through December 31, 2024.
- B. Extension of this time of service may be granted in writing to the ENGINEER by the OWNER'S representative.

SECTION VII - MISCELLANEOUS

And, finally, it is agreed that:

- A. Before the initiation of performance under this Agreement, ENGINEER shall file with the CITY certificates of insurance, acceptable to the CITY, verifying coverages and identifying the CITY'S commissions and employees as additional insured as pertains to the Agreement. The additional insured clause shall not apply to the ENGINEER'S Professional Liability or Worker's Compensation policies. This inclusion shall not make the CITY a partner or joint venture with ENGINEER in its operations hereunder. The CITY, its' officers, commissions, and employees, shall be named as additional insured as respects: Liability arising out of acts performed by or on behalf of the ENGINEER; products and completed operations of the ENGINEER; premises owned, leased or used by the ENGINEER; or automobiles, leased, hired or borrowed by the ENGINEER.

A certificate of Insurance is not required if the ENGINEER has on file with the CITY'S Risk Manager a Certificate evidencing that current coverage is in force and evidence of subsequent coverage renewals is provided annually.

In the event of an occurrence, it is further agreed that any insurance maintained by the CITY, its officers, commissions, and employees shall apply in excess of and not contribute with insurance provided by policies named in this Agreement.

This insurance shall include the specific coverages and be written for not less than the limits of liability as specified below or required by law, whichever is greater.

Professional Liability

\$2,000,000 per occurrence and as an annual aggregate.

The ENGINEER shall maintain the full limit or coverage as stated above for a minimum of one year after substantial completion of the Project to the best of his ability.

Commercial General Liability

This insurance shall be written in comprehensive form and shall protect CITY against all claims arising from injuries to persons, other than its' employees, or damage to property of the CITY, or others, arising out of any negligent act, error, or omission of ENGINEER or his employees, or subcontractors.

The Liability limits shall be not less than:

\$1,000,000 combined single limit per occurrence and \$2,000,000 in the aggregate for bodily injury, personal injury and property damage.

Policy will include:

1. Premises and Operations
2. Broad Form Contractual
3. Personal Injury with Employee Exclusion Deleted
4. Products/Completed Operations
5. Broad Form Property Damage

The insurance shall name the City of Lansing, Kansas as an additional insured.

Automobile Liability

This insurance shall be written in comprehensive form and shall protect ENGINEER against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on or off the sites of the CITY of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired.

The liability limits shall be not less than:

\$1,000,000 combined single limit per occurrence for bodily injury and property damage.

Workers' Compensation and Employer's Liability

This insurance shall protect ENGINEER against all claims under applicable state Workers' Compensation laws. ENGINEER shall also be protected against claims for injury, disease, or death of employees, which for any reason, may not fall within the provisions of a Workers' Compensation law. This policy shall include an "all states" endorsement.

The liability limits shall be not less than:

- | | |
|-------------------------|-----------------------------|
| 1. Workers Compensation | Statutory |
| 2. Employer's Liability | \$1,000,000 each occurrence |

Umbrella Excess Liability

ENGINEER shall maintain Umbrella Excess Liability Insurance (General and Automobile Liability) with a limit of \$2,000,000 for each occurrence and \$2,000,000 in the aggregate. The insurance shall name the City of Lansing, Kansas as an additional insured.

Mutual Waiver of Subrogation

To the extent that damages are covered by property insurance maintained during or after the completion of the Services, the CITY and the PROFESSIONAL SERVICES AGREEMENT waive all rights, including rights of subrogation, against each other and all contractors, consultants, and employees of the other, except for rights they may have to the proceeds of that insurance. The CITY and the PROFESSIONAL SERVICES AGREEMENT shall require the same waiver by their respective contractors, subcontractors, consultants.

- B. The CITY acknowledges the ENGINEER'S construction documents as instruments of professional service. All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by the ENGINEER as instruments of service shall remain the property of the ENGINEER who retains the copyrights. The CITY shall not reuse or make any modification to these instruments of service without the prior written authorization of the ENGINEER. The CITY shall not reuse or make any modification to these instruments of service without the prior written authorization of the ENGINEER. The OWNER agrees to release and hold the ENGINEER harmless from any claim, liability or cost (including reasonable attorneys' fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of the construction documents by the OWNER or any person or entity that acquires or obtains the instruments of service from or through the OWNER without the written authorization of the ENGINEER.
- C. The ENGINEER agrees to keep confidential and not to disclose to any person or entity, other than the ENGINEER'S employees, subconsultants, the general contractor, subcontractors, or any permit authorities, if appropriate, any data and information not previously known to and generated by the ENGINEER or furnished to the ENGINEER and marked CONFIDENTIAL by the CITY. These provisions shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the ENGINEER from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other

authority with proper jurisdiction, or if it is reasonably necessary for the ENGINEER in the defense of any suit or claim.

- D. To the fullest extent permitted by law, the ENGINEER shall be required to indemnify, defend, and hold harmless the City of Lansing, Kansas, its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including loss of use resulting therefrom, but only when caused in whole or in part by negligent acts or omissions of the ENGINEER. The ENGINEER shall not be responsible for indemnifying the City, or its agents and employees for such agent's and employee's sole negligence.

The CITY agrees, to the fullest extent permitted by law, to release and hold the ENGINEER harmless from any loss, damage, or cost (including reasonable attorneys' fees) to the extent caused by the CITY'S negligent acts, errors or omissions and those of the contractors, subcontractors or employees of the CITY.

- E. The following limitations of responsibility shall apply to the ENGINEER for services provided:
1. The ENGINEER shall not be held responsible for the contractor's construction means, methods, techniques, sequences, procedures, safety precautions, or any programs incidental thereto, which shall remain the sole responsibility of the contractor.
 2. The ENGINEER shall not be responsible for the contractor's failure to perform the work in accordance with the contract documents.
 3. The ENGINEER shall not be held responsible for acts or omissions of the contractor, any subcontractor or their agents or their employees or any other persons performing any of the construction work.

The contractor is the person, firm, or corporation with whom the CITY has entered into an Agreement to construct this Project.

- F. In an effort to resolve any disputes that arise during the design or construction of the Project or following the completion of the Project, the CITY and the ENGINEER agree in good faith to attempt to resolve amicably, without litigation, any dispute arising out of or relating to this agreement. In the event that any dispute cannot be resolved through direct discussions, the parties agree to endeavor to settle the dispute by mediation. Either party may make a written demand for mediation, which demand shall specify in detail the facts of the dispute. The matter shall be submitted to a Mediator who shall hear the matter and provide an informal opinion and advice. Said informal opinion and advice shall be nonbinding on the parties but shall be intended to help resolve the dispute. The Mediator and the location where the mediation is held will be mutually agreeable between the parties. The Mediator's fees shall be shared equally by the parties.

The CITY and the ENGINEER further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to

require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

- G. The CITY shall promptly report to the ENGINEER any defects or suspected defects in the ENGINEER's services of which the CITY becomes aware, so that the ENGINEER can take measures to minimize the consequences of such a defect. The CITY further agrees to impose a similar notification requirement on all contractors in its CITY/CONTRACTOR contract and shall require all subcontracts at any level to contain a like requirement. Should legal liability for the defects exist, failure by the CITY and the CITY's contractors or subcontractors to notify the ENGINEER shall relieve the ENGINEER of any liability for costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.
- H. Except as provided herein, services hereunder shall be carried to completion without undue interruption. Subject to acquisition of essential data from the CITY, the services hereunder shall be scheduled with subsequent authorizations and commissions from other clients of the ENGINEER.
- I. This Agreement shall be governed and construed in accordance with the laws of the State of Kansas and in the Jurisdiction of Leavenworth County if applicable.
- J. Since the ENGINEER has no control over the cost of labor, material or equipment, or over contractor's methods of determining prices, or over competitive bidding or market conditions, the opinions of probable construction cost provided for herein are to be made on the basis of ENGINEER'S experience and qualifications and represent ENGINEER'S best judgment as a design professional familiar with the construction industry, but ENGINEER cannot and does not guarantee that the bids or the project construction costs will not vary from the cost estimates prepared by the ENGINEER. If CITY desires more accurate information on Project cost, it shall retain the services of a professional construction estimator.
- K. ENGINEER shall perform its services in accordance with the standard of care and skill ordinarily exercised under the same or similar circumstances by members of the ENGINEER'S profession.
- L. Title VI Compliance Statement:
The City of Lansing assures that no person shall on the grounds of race, color, national origin, sex, disability, age or low-income status as provided by Title VI of the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987 (P.L. 100.259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The City of Lansing further assures every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

IN WITNESS WHEREOF, **CITY OF LANSING, KANSAS** and **GEORGE BUTLER ASSOCIATES, INC.**, by their authorized representatives, have hereunto subscribed their names this _____ day of _____, 2024. Executed in duplicate with copies to the CITY and ENGINEER.

CITY OF LANSING, KANSAS

By: _____
Timothy Vandall
City Administrator

GEORGE BUTLER ASSOCIATES, INC.

By: *Gary S. Beck*
Gary S. Beck, PE
Vice President